IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

WP(C).No. 23557 of 2007(D)

PETITIONERS:

1. SANTHI GOPALAKRISHNAN, AGED 54 YEARS,
   'DEEPTHI', THONDANKULANGARA WARD, ALAPPUZHA,
   REP. BY HER POWER OF ATTORNEY HOLDER
   DR. S.RADHAKRISHNAN NAIR, AGED 66 YEARS,
   S/O. NARAYANA MENON, RAJARESHMI, PALACE ROAD,
   ALUVA-1.

2. SHYAMA MUKUNDAN, AGED 50 YEARS,
   SANTHI NIVAS, WARRIAM ROAD, KOCHI-16, REP. BY
   HER POWER OF ATTORNEY HOLDER DR. S.RADHAKRISHNAN
   NAIR, AGED 66 YEARS, S/O. NARAYANA MENON,
   RAJARESHMI, PALACE ROAD, ALUVA-1.

BY ADV. SRI.P.A.AUGUSTINE(AREEKATTEL)
SRI.K.B.RAMANAND

RESPONDENTS:

1. THE GREATER COCHIN DEVELOPMENT
   AUTHORITY, REP. BY ITS SECRETARY, P.B.NO.2012,
   GIRI NAGAR, ERNAKULAM.

2. THE CORPORATION OF KOCHI, REP. BY
   ITS SECRETARY, CORPORATION OFFICE, KOCHI-11.

R2 BY ADV. SMT.M.K.PUSHPALATHA,SC,COCHIN CORPORATION
R1 BY ADV. SRI.P.R.RAMACHANDRA MENON, SC,GCDA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 23557 OF 2007

Dated this the 14th day of September, 2007

JUDGMENT

The grievance of the petitioners who applied to the 2nd respondent Corporation for a building permit for construction of a residential building on a plot having a total extent of less than 13 cents is that the 2nd respondent Corporation and the 1st respondent GCDA are not inclined to consider the application favourably on various reasons including the main reason that a portion of the plot is proposed to be acquired for the formation of a 7 meter road as per the General Council decision No.18 dated 27.02.1993 of the GCDA.

Heard Mr.P.A.Augustine, counsel for the petitioners, Sri.P.R.Ramachandra Menon, Standing Counsel for the GCDA and Smt.M.K.Pushpalatha, counsel for the 2nd respondent Corporation. According to Smt.Pushpalatha the Corporation is not presently having papers pertaining to the application submitted by the petitioner, since all the papers have been entrusted with the Land Acquisition Authority. Sri.Ramachandra Menon however would agree that no notification under Section 4(1) of the Land Acquisition Act has been promulgated so far for acquisition of any portion of the petitioners' property for any purpose whatsoever. My attention was invited by Mr.Augustine to the

judgment of the Division Bench in **Padmini v. State of Kerala** [1999 (3) KLT 465] and also to that of the Supreme Court in **Raju Jethmalani & others v. State of Maharashtra & others** [(2005) 11 SCC 222]. considering the principles laid down in those two judgments, I am of the view that the respondents are not justified in declining permit to the petitioner on the reason that there is a proposal to acquire a portion of the petitioner's property for the purpose for the formation of 7 meter road. I dispose of the Writ Petition issuing the following directions:

The respondents are directed to pass orders on the petitioner's application for building permit without being influenced at all by the proposed formation of the 7 meter road or by any proposal to acquire the petitioner's property in future, provided the petitioner files an undertaking in the form of an affidavit stating that in the event of any notification under Section 4(1) of Land Acquisition Act has been promulgated for acquisition of any portion of the petitioner's plot within 6 months of his receiving permit, he will not be entitled for any compensation towards the constructions put up on the strength of the permit issued. Orders will be passed on the permit application within six weeks of the petitioner filing affidavit as directed above. It is needless to mention that even after the six months period mentioned herein it will

be open to the respondents to acquire the petitioner's property for any genuine public purpose in which case the petitioner will be entitled for compensation under the Land Acquisition Act.

PIUS C. KURIAKOSE, JUDGE

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